BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

OWEN MARTIN REICHERT	)	
Claimant	)	
	)	
VS.	)	
	)	
WINDSOR PLACE	)	
Respondent	)	Docket Nos. 1,045,811[1]
	)	1,033,730
AND	)	1,033,731
	)	
TECHNOLOGY INS. CO. and	)	
CORNHUSKER CASUALTY CO.	)	
Insurance Carriers	)	

ORDER

STATEMENT OF THE CASE

Respondent and one of its insurance carriers, Technology Insurance Company (Technology), requested review of the November 8, 2010, preliminary hearing Order entered by Administrative Law Judge Thomas Klein. William L. Phalen, of Pittsburg, Kansas, appeared for claimant. Bart E. Eisfelder, of Kansas City, Missouri, appeared for respondent and Technology. Ronald J. Laskowski, of Topeka, Kansas, appeared for respondent and Cornhusker Casualty Company (Cornhusker).

Although the caption of the ALJ's November 8, 2010, Order contains all three of claimant's docketed claims, in the body of the Order the ALJ states that it is restricted to Docket No. 1,045,811.

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[1] In Docket No. 1,033,730 claimant alleges an accident date of "[e]ach and every working day beginning 07/14/06 and continuing" and injuries of "[h]eat exhaustion, both hands, wrists, arms and all other parts of the body affected." Form K-WC E-1 filed March 19, 2007. In Docket No. 1,033,731, claimant alleges an accident on November 30, 2006, and injuries to his back, both legs and all other parts of the body affected. Form K-WC E-1 filed March 19, 2007. In Docket No. 1,045,811, claimant alleges an accident date of "[o]n or about 3/6/09" and injuries to his back, left hip, left leg, and all other parts of the body affected. Form K-WC E-1 filed May 26, 2009.

The Administrative Law Judge (ALJ) found that claimant suffered an injury on March 6, 2009, that arose out of and in the course of his employment with respondent and, accordingly, ordered respondent/Technology to pay as authorized medical claimant's treatment expenses incurred with Dr. Pandurang Chillal in the amount of $337 and Coffeyville Regional Medical Center in the amount of $7,766.07, in Docket No. 1,045,811.

The record on appeal is the same as that considered by the ALJ and consists of the transcript of the September 15, 2010, Preliminary Hearing and the exhibits, together with the pleadings contained in the administrative file.

ISSUES

Claimant alleges he dislocated his left artificial hip on March 6, 2009, while working for respondent and, therefore, respondent should be held responsible for the attendant medical expenses. Technology, who took over respondent's workers compensation insurance coverage on January 1, 2009,[2] contends it is not liable for claimant's medical expenses for at least four reasons: (1) the injury did not occur in the course of claimant's employment with respondent as claimant was not performing his work duties at the time of the incident but, instead, was merely sitting down for his personal comfort; (2) claimant's act of sitting down was a normal activity of day-to-day living; (3) claimant's hip dislocation was a natural and probable consequence of claimant's back injury of November 30, 2006, and, therefore, Cornhusker should be responsible for the medical expenses in question, and (4) claimant's artificial hip dislocating was a risk personal to claimant and, therefore, not compensable under the Workers Compensation Act. In short, Technology argues claimant's hip dislocation is not compensable under the Workers Compensation Act but if it were, Cornhusker would be the responsible insurance carrier.

Cornhusker, who was respondent's workers compensation insurance carrier before January 1, 2008,[3] maintains that it is not liable for claimant's medical expenses as claimant's alleged accident occurred outside its period of insurance coverage. It argues the credible evidence supports the ALJ's decision that claimant suffered a new and distinct injury on March 6, 2009. Moreover, Cornhusker maintains that claimant's accident resulted from an employment hazard; namely, working in a cramped area. Finally, Cornhusker reminds the Board that liability for the alleged November 2006 back injury has yet to be determined in Docket No. 1,033,731 and that medical restrictions were not placed on claimant until he allegedly fell at work in March 2008 while descending a ladder. And a March 2008 accident would fall within some other insurance carrier's period of coverage. In short, Cornhusker argues the November 8, 2010, Order should not be disturbed.

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[2] P.H. Trans. (September 15, 2010) at 4, 5.

[3] *Id.*

Claimant contends the Order should be affirmed. He argues it was necessary for him to "get down low to inspect the air conditioning unit", which "was not a normal activity of day to day living."[4]

The issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of his employment with respondent. Technology also raised the issue of whether the ALJ exceeded his jurisdiction by ordering respondent and Technology to pay the medical bills referenced in the Order and the issue as to whether those medical bills were authorized by respondent. Those issues, however, were neither addressed nor mentioned in Technology's brief to the Board. Nonetheless, claimant addressed those issues in its brief and asserts that the ALJ has the authority to address the payment of medical bills in a preliminary hearing order and, therefore, the Board does not have jurisdiction over those issues at this juncture of the claim. In the alternative, claimant maintains the medical charges in question were attendant to an emergency and, therefore, they should be paid as authorized medical benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds and concludes the preliminary hearing Order should be affirmed.

Claimant is employed by the respondent nursing home in its maintenance department. On March 6, 2009, claimant was preparing to work on an air conditioner that was low to the floor in cramped quarters. When he squatted to sit on a cinder block, he experienced severe pain in his left hip. Claimant was taken by ambulance to the Coffeyville Regional Medical Center, where he was hospitalized overnight. Claimant incurred greater than $8,000 in medical bills.

Claimant has a left artificial hip, which had dislocated. But this was not the only time the hip prosthesis had dislocated as it had occurred on two earlier occasions; namely, once when he was sitting on a bed reaching to tie his shoe and once when reaching down to dry his foot that was resting on the side of a bathtub. Neither time did claimant's doctor explain why the hip had dislocated.

Claimant testified that at the time of the March 2009 incident, he was working under medical restrictions. Claimant explained that in March 2008 he fell backwards and caught himself while descending a ladder. Respondent insisted that claimant consult a doctor following the incident, which claimant feels only temporarily increased his symptoms. Other than seeing the company doctor, Dr. Chillal, on one occasion, claimant received no additional medical treatment for the ladder incident and no workers compensation claim

[4] Claimant's Brief at 2 (filed January 4, 2011).

was initiated. Nevertheless, claimant was then restricted from lifting greater than 20 pounds and told to avoid bending, twisting, stooping, and reaching below the waist. Although the restrictions were issued following the ladder incident, claimant states those restrictions related to his November 2006 back injury.[5] And for his hip, claimant has been told not to bend more than 90 degrees. But the record does not disclose when he was given that direction.

The only medical expert to provide an opinion regarding claimant's March 2009 incident was Dr. Edward J. Prostic, who examined claimant on February 15, 2010. Dr. Prostic opined that claimant's hip dislocated due to the position that claimant had placed it. The doctor wrote, in part:

> Mr. Reichert sustained dislocation of his left hip because of the position he was required to be in during the course of his employment on or about March 6, 2009 while working for Windsor Place. The treatment required to his hip was necessitated by his work injury.[6]

The portion of Dr. Prostic's opinion that pertains to whether claimant's job required him to be in a particular position is disregarded as it invades the province of this factfinder. Nonetheless, the undersigned Board Member finds the evidence presented thus far establishes that claimant met with personal injury by accident arising out of and in the course of his employment with respondent on March 6, 2009.

The preliminary hearing Order should be affirmed. The evidence is uncontradicted that claimant was attempting to sit upon a cinder block to work on a low-lying air conditioner at the time of his accident. The act of lowering oneself to the cinder block, which is lower than a chair, is not an act of day-to-day living as contemplated by K.S.A. 2009 Supp. 44-508(e). Similarly, the evidence is uncontradicted that the space in the utility room where the accident happened was cramped, as it contained other appliances, water heaters, and an electrician.

An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[7] Whether an accident arises out of and in

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[5] P.H. Trans. (September 15, 2010) at p. 34, 35.

[6] *Id.*, Cl. Ex. 3.

[7] *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, 771, 955 P.2d 1315 (1997).

the course of the worker's employment depends upon the facts peculiar to the particular case.[8]

The undersigned is persuaded that at the time of the accident, claimant was positioning himself to work on an air conditioner and, therefore, lowering himself to the cinder block was a risk attendant to the work he was about to perform. Accordingly, claimant's accident arose out of the nature and conditions of his work. The evidence fails to establish the March 6, 2009, incident was a natural and probable consequence of an earlier injury.

Technology also raised in its application for review the issue of whether the ALJ exceeded his jurisdiction in awarding claimant medical benefits and whether those medical bills were authorized by respondent. But respondent and Technology did not address those issues in its brief and, therefore, the Board does not know the basis of their contentions. Respondent and Technology have apparently abandoned those as separate issues from the issues dealing with the compensability of the claim. Nonetheless, the undersigned notes that an ALJ does have the jurisdiction and authority under the Workers Compensation Act to address the payment of medical bills at a preliminary hearing, including the authority to determine whether the medical charges should be treated as authorized.[9]

The above preliminary hearing findings are neither final nor binding as they may be modified upon a full hearing of the claim.[10] Moreover, this is a review of a preliminary hearing Order and, therefore, it has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to final orders, which must be determined by the entire Board.[11]

WHEREFORE, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Thomas Klein dated November 8, 2010, is affirmed.

IT IS SO ORDERED.

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[8] *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 502, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

[9] K.S.A. 44-534a.

[10] *Id.*

[11] K.S.A. 2009 Supp. 44-555c(k).

Dated this _____ day of January, 2011.

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HONORABLE DUNCAN A. WHITTIER
BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Bart E. Eisfelder, Attorney for Respondent and its Insurance Carrier, Technology Insurance Co.
Ronald J. Laskowski, Attorney for Respondent and its Insurance Carrier Cornhusker Insurance Co.
Thomas Klein, Administrative Law Judge